HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION Nos. 5513
and 5518 of 2007

DATED: 23-03-2007

W.P.No.5513 of 2007
Between:

Vatti Reddemma and another

…Petitioners

and

The Revenue Divisional Officer/Land Acquisition Officer, Eluru, West Godavari District and others

…Respondents.

W.P.No.5518 of 2007
Between:

S.Satyanarayana Murthy

…Petitioner

and

The State of A.P. rep. by its Principal Secretary, Revenue Department, Secretariat, Hyderabad and others

…Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.Nos. 5513 and 5518 of 2007

COMMON ORDER:

The petitioners in these two writ petitions are the owners of land in Sy.Nos. 190/5, 190/6 and 182 (Old R.S.No.155) in Kodakatla, Tadepalligudem Town, West Godavari District. For execution of a Railway over bridge to support the National High Way No.5, acquisition of this property under the provisions of the Land Acquisition Act, 1894 (for short 'the Act') was proposed. The petitioners allege a change in the alignment for extraneous reasons. The notification under Section 4 (1) of the Act was issued on 19-1-2007 proposing acquisition of the lands of the petitioners and some others. Urgency was not invoked and the enquiry under Section 5-A is not dispensed with. The petitioners lodged their objections to the acquisition proposal after receipt of notice soliciting such objections, on 13-2-2006 and 27-2-2007 respectively. The petitioners assert that no decision under Section 5-A (2) of the Act has yet been taken by the competent authority and communicated to them. Since the enquiry under Section 5-A (2) of the Act has not been dispensed with by invoking urgency, the petitioners are entitled to be communicated the decision on their objections, as the enquiry under Section 5-A of the Act is not a mere ritual but a substantive statutory safeguard against the arbitrary exercise of the power of eminent domain. However, the petitioners assert that the respondents, even without a communication of the notification and decision under Section 5-A of the Act or issuing a declaration under Section 6 of the Act formalizing the acquisition

process, have proceeded to dispossess the petitioners of their lands and have also commenced the digging up of land, erection of certain structures and have also mobilized men and material for this purpose.

The learned Government Pleader for Land Acquisition, at the stage of admission, would submit that no such interference with the petitioners properties nor dispossession could be effected without disposing of the petitioners objections lodged under Section 5-A of the Act, without issuing a draft declaration under Section 6 of the Act and without passing an award, as no advance possession process had been initiated.

In the light of the petitioners' assertion as to unlawful interference by the respondents and in the light of the fair submission made by the learned Government Pleader for Land Acquisition that no such proceedings could be initiated by the respondents without completing the formalities for acquisition, including passing of the award, and in the factual circumstances of this case, the writ petition is disposed of, at the stage of admission, directing the respondents not to interfere with the petitioners' ownership and possession of the properties described above in this order without first communicating to the petitioners, by registered post acknowledgement due, the decision taken by the competent authority on the objections lodged by the petitioners for the acquisition process, under Section 5-A(2) of the Act. Even thereafter, the respondents are entitled to take possession only after first issuing notice to the petitioners to participate in the award enquiry and after due passing of an award. Nothing in this order shall be construed as depriving the petitioners from pursuing appropriate remedies if aggrieved against any order passed under Section 5-A(2) of the Act and communicated to them.

The writ petition is accordingly disposed of at the stage of admission. There shall be no order as to costs.

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GODA RAGHURAM, J

23-03-2007
GRR